A

DISSERTATION

ON

JURIES;

WITH A DESCRIPTION OF THE

HUNDRED COURT:

AS AN

APPENDIX

TO THE

COURT OF REQUESTS.

By W. HUTTON, F.A.S.S.

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MDCCLXXXIX.

A

DISSERTATION, &c.

IT is common for an author to attack the works of others, but ſeldom his own; to depreciate his book is like depreciating himſelf; this drudgery is left for others, and he well knows, there are book-worms ſufficient to eat into his vitals. But the ungrateful taſk of ſelf-degradation falls to my lot; happy, however, is an author if he *alone* makes the attack.

In the *Court of Requeſts*, which I ſent into the world in one thouſand ſeven hundred and eighty-

ſeven, I was totally ſilent upon that ancient and valuable barrier of Britiſh liberty, *the trial by Jury*, from whence two gentlemen, whoſe characters I reſpect, a doctor of divinity, and a barriſter at law, ſuppoſing, from that ſilence, and my attachment to Courts of Conſcience, that I was no friend to Juries, jointly publiſhed ſome ſtrictures in the prints of the day, wherein they expreſſed an approbation of ſuch Courts, but would not exchange for them, that ſafe bulwark, *the Jury*; and to ſtrengthen the remark, quoted the authority of Judge Blackſtone. I inſtantly ſaw the defect, and was ſorry I had not touched upon that important ſubject; a ſpecies of government which has ever had my hearty concurrence.

When the authors of the MONTHLY REVIEW, in December, one thouſand ſeven hundred and eighty-eight, made their remarks upon

upon my publication, they delivered exactly the ſame ſentiments the two gentlemen had done, and introduced the ſame paſſage from the learned Judge, which cauſed me ſenſibly to feel the defect, and gave riſe to this Appendix.

Juries are as important as they are ancient; they may be debaſed, they may be reformed, but they will never be annihilated; what has been known and approved near a thouſand years, will not be ſuffered to fall. If this mark of Engliſh freedom has been preſerved through the dark ages of ignorance, poverty, and tyranny, it is not likely to be loſt when the ſpirit of liberty is ſtrengthened by knowledge and wealth. But every thing ſhould anſwer the end of its inſtitution without derogating from its own conſequence; we ſhould laugh at a man if he covered his head with his ſhoes, but if they cover his feet, they accompliſh the

end deſigned. It would be ridiculous for him to load his horſe with his walking-ſtick only, while he himſelf walked on foot; but if the horſe carried him, and he the ſtick, all would be right. Did a man ever build a palace for a pig? Every joiner knows that the pieces which go together ſhould always fit each other. The diſputes about property, which daily occur, are diſpoſed of, various ways, according to the magnitude of the caſe, and the temper of the diſputants; and though a Jury was deſigned to interpoſe in moſt concerns of enormity, yet ſome matters are, and ought to be, out of the reach of the laws, conſequently out of theirs. In ſuch caſes, the prerogative of the Crown, a deciſion of the Lords, a decree in Chancery, or a determination in the Court of Requeſts, may ſafely operate. The Cauſe, and the Court ought, in ſome meaſure, to fit each other. When an auguſt Court, and a Jury of twelve,

condeſcend

condeſcend to handle trifles, they depart from their dignity. The very idea of ſubmitting little conteſts to a Jury of ſuch magnitude, expenſively ſummoned, with all their appendages, carries an abſurdity. The charge would amount to more than the whole ſum ever litigated in a Court of Requeſts. To introduce juſtice at a dear rate is nearly to deſtroy her; nor will it anſwer to ſeek her at a diſtance, ſhe ſhould ever be near, and eaſy of acceſs. A formal proceſs for trifles is like a mountain bringing forth a mouſe, or a prince raiſing an army of fifty thouſand men to purſue a petty thief. Not one of the cauſes which are brought to a Court of Conſcience ought to be ſubmitted to a Jury, but half thoſe brought to a Jury, being beneath their inſpection, ought to be decided by the Court. In what light would the ſpectators view a Jury, or, in what light would they view

themſelves, while deciding upon a cauſe like the following?

A woman having taken her pudding to the bake-houſe, the baker, by ſome miſchance, while placing it in the oven, broke the veſſel, and finding the contents going to the ground, caught it in a wooden bowl. When the woman returned for her dinner, he told her the miſhap, and offered to make ſatisfaction. "She would "have no recompence, ſhe would have her "pudding." She huffed, bounced, ſwore, put the baker into a paſſion, who, at length, turned her out of the room.

The violent flame in the wife, kindled another in the huſband, and *both* ſwore "they would "ruin the raſcal," and inſtantly applyed to an attorney of eminence. Some people conſider

all

all their days, what pity this warm couple did not conſider one! "He has," ſays the attorney, "treated you exceeding ill, this will well "bear an action." An action was brought, the cauſe carried to Warwick; the briefs were made out, the council fee'd, and every avenue guarded to prevent a retreat on one ſide, or a ſurprize on the other, while the poor baker, averſe to law, had often, but in vain, ſued for peace. When the cauſe was opened to the Judge (I think Aſton) he pronounced it too frivolous for attention, and, to his honour, ordered a diſmiſſion, by which he ſaved the Jury's reputation, and his own. Nothing now remained but that each ſhould pay his coſts. The plaintiff's attorney brought in his bill, eighteen pounds, which he not being able to diſcharge, he was inſtantly arreſted, and carried to priſon.

A noted dentiſt, pitying his caſe, adverti ſed

to the world, " that if the *well-diſpoſed* choſe to " have their teeth drawn, the profits ſhould be " appropriated to releaſe the priſoner." Thus it appears, an obedient huſband was committed to priſon by his loving wife; that even rotten teeth have their uſe, and that the conciſe proceedings of a Court of Requeſts are ſuitable to cauſes of rancour, as well as debt. Had it been brought there, the Commiſſioners would, at a ſmall expence of money, time, and quiet, have ordered the baker to eat his pudding in peace, and pay the value.

I have ſeen with concern, many a cauſe as little important as the *pudding and ſcolding wife*, ſeriouſly employ a Jury.

Blackſtone's authority is univerſally allowed; he may be ſaid to preſide in all the Courts under the Crown, to hold a ſeat upon every bench,

bench. He is acknowledged in Chancery, is quoted in both houſes of Parliament, and terminates juridical diſputes over the bottle. It may be deemed preſumption to controvert the ſentiments of ſo exalted a character; for when an author has acquired the credit of Blackſtone, we take indiſcriminately all his remarks for ſterling; we never once imagine there may be counterfeits among them. But it ought to be conſidered, that although he delivers nineteen true things, yet we may fairly reject the twentieth, if doubtful. Whatever will not bear the touch-ſtone of reaſon, ought never to be admitted into common law,

Blackſtone, as a man, was ſubject to the frailties of men. I have ſeen ſome of his deciſions, wherein appeared haſte, warmth, and prejudice. Beſides, it is perfectly conſiſtent for a man to promote his own calling by depreciating

ciating every ſcheme that injures it. Blackſtone was a lawyer, acquired wealth and power by his practice; his connexions were of the ſame profeſſion, conſequently purſued, with him, the ſame intereſt. Where then is the wonder if his ſentiments tended to diminiſh the power of other Courts, when they tended to diminiſh his own? What man can ſmile to ſee an enemy proſper, or will act againſt himſelf to favour another? Was a barber ever known to decry the uſe of wigs, or promote long beards?

The dreadful paſſage, from this celebrated author, elevated like a butcher's cleaver, to ſlaughter Courts of Conſcience, that Juries may fatten on their remains, is as follows: After deſcribing their firſt inſtitution, and the eaſy manner in which the ſuitors find redreſs, "But "it is to be feared," ſays he, "that the "general remedy which of late hath been

" principally applied to this inconvenience may
" itſelf be attended in time, with very ill
" conſequences: as the method of proceeding
" therein, is entirely in derogation of the
" common law; as their large diſcretionary
" powers create a petty tyranny in a ſet of
" ſtanding Commiſſioners; and as the diſuſe of
" the trial by Jury may tend to eſtrange the
" minds of the people from that valuable
" prerogative of Engliſhmen, which has already
" been more than ſufficiently excluded in many
" inſtances. How much rather is it to be
" wiſhed, that the proceedings in the county
" and hundred Courts could again be revived,
" without burdening the freeholders with too
" frequent and tedious attendances; and at the
" ſame time removing the delays that have
" inſenſibly crept into their proceedings, and
" the power that either party have of tranſ-

" ferring

"ferring at pleaſure their ſuits to the Courts "at Weſtminſter!"

It is a comfort, however, that the loſs of this valuable Engliſh prerogative is only founded in the Judge's fears. That the proceedings in Courts of Conſcience are entirely in derogation of common law, cannot readily be granted. Common law is common juſtice, or common equity, which is their only guide. What the ſun is to the clocks, equity is to the Commiſſioners; though there may be ſmall variations, they ever apply to this as their grand director; and daily experience will convince the obſerver, that the difference is leſs here than in other Courts. Every Court is wrong juſt in proportion as it varies from this great regulator. No evil can be apprehended from the large diſcretionary powers of the Commiſſioners,

 becauſe

becauſe thoſe powers are circumſcribed by law, and by character. If a man has not, at leaſt, a ſmall ſhare of ſenſe, he is not fit for a Commiſſioner; if he has, it will prevent him from oppoſing the laws of his country, for it is thoſe laws which ſupport him; beſides, if a man does wrong, it is generally for ſome profit; which is never found in this court; we can, therefore, no more ſuppoſe a Commiſſioner would wantonly wound his character than his body. Tyrants act in ſecret, but his deciſions are always in public, which is holding up his reputation to view. I have known more than a hundred Commiſſioners paſs the bench; I have heard ſome accuſed of weakneſs, and others of inattention, but not one of tyranny. As the Commiſſioner gives his time and his talents gratis, he can have nothing in proſpect but indulging a little honeſt pride himſelf, and doing a kindneſs to others, neither of which can

be

be accompliſhed by an unfair deciſion. Of all the Courts under the Crown there is none in which the Judges and the Suitors are ſo near an equality, and it is no where ſo difficult to eſtabliſh a tyranny, as among equals; then, ſurely, the ungrateful charge of the learned Judge, of *petty tyranny*, is without foundation. Whether they will bear the name of ſtanding Commiſſioners is doubtful, becauſe ten are ballotted out every two years; and ſhould we allow them the name, then they muſt, by habit, the better underſtand their buſineſs, and be the leſs liable to err. What are the Lords, the Chancellor, the Judges, the Juſtices, and the Attornies who preſide over Hundred Courts, but ſtanding Commiſſioners? every new Commiſſioner is to *learn*; a taſk rarely accompliſhed even by an old one. But the grand objection is, *there are no Juries*. In this Court of predicted tyranny, *twelve* important men cannot be

be found ſitting over *one* nothing. As the number *twelve* has been fixed upon, time immemorial, for a Jury, it becomes neceſſary to enquire whether there is any myſtical excellence in that number, which gives it a preference to another? If I am anſwered, by proof, in the affirmative, the point is ſettled; if not, it follows, another number will anſwer the end juſt as well, and a bench of Commiſſioners are as much a Jury, and of Engliſhmen too, as that before a Judge. They only differ in number; nay, there is more danger of error in the greater Jury, if it will bear the name; for they find it convenient to charge their blunders upon the bench, or, being a large number, upon each other. This is an excellent ſhelter not enjoyed by a Commiſſioner of the Court of Conſcience, who is obliged to father his own; a powerful excitement to circumſpection. Nor does it follow, that becauſe there are twelve men, there are twelve voices;

the

the generality of Juries are led by the Judge, an inferior number than that in a Court of Requeſts. Even the more enlightened Juries are chiefly conducted by *one* of their own body.

Some cauſes, by conſent of the parties, and often by advice of their attornies, when they can carry the cauſe no farther, are ſubmitted to arbitration, which is alſo as much a Jury, though without the name, as any other. This is a deciſion of equity, like that in a Court of Conſcience, and a Court of Conſcience is neither more nor leſs than an arbitration. There may be ſome difference in their eſtabliſhment; one is created by the parties, the other by the laws of England; one has a firm, the other a ſandy foundation; one can *do* that buſineſs to which the other *pretends*. An arbitrator is liable to give diſguſt, by not obeying the will of his Creator. I have recently declined this office, when

when ſolicited, becauſe the law, not having armed me with power, I wiſhed to avoid offence.

I ſhall give a ſpecimen of that kind of cauſe which an attorney, not in the habit of conveyancing, carries to the foot of the King's-Bench, but dares not aſcend; a cauſe which he ſhears to the quick, and turns adrift; he then promotes a friendly arbitration, to ſerve the parties? No, to draw another profit from the bonds.

Two neighbours lived in friendſhip; they often drank tea, and cut up bread-and-butter, and reputations together. One kept a Cat, the other a Canary-bird, which partook of the family food, and the friendſhip. The cat, in one of her neighbourly viſits, caught the bird in an unguarded moment, and killed it. The proprietor, in revenge, deſtroyed the cat. A *ſhort* time opened that violence between the owners,

which a *longer* could not allay. Each party brought his action againſt the other, and nothing ſhort of deſtruction would ſatisfy. The ſame attorney, who conducted *the pudding and ſcolding wife*, conducted this. Every manœuvre to overcome, was put in practice; the attornies were often conſulted, who each acquired that degree of eſteem with his party, which they had laviſhed on each other. There happened, however, not to be that bitter enmity between the attornies, which ſubſiſted between their clients; for though they *ſeemed* in oppoſition, they kept the ſame point in view. One of them wiſely conſidered, that if he *had* a right to draw all the profit he was able from his profeſſion, yet he ſhould make but a ſorry figure in an awful Court, ſupported only by a cat; and the other as wiſely judged, his diminitive bird would probably bring upon him the laugh of the crowd, and the reprimands of the bench; they, therefore,

therefore, united in the Hall at Warwick, to withdraw both the actions, and decide by an arbitration.

Could this cauſe have been brought to a Court of Requeſt, peace might ſoon have been eſtabliſhed by diſmiſſing the cauſe *after full hearing*, and charging the expence to the aggreſſor. The Commiſſioners would have conſidered, that the bird, not being able to defend itſelf, ought to have been placed out of the power of injury; that, on the other ſide, the cat muſt have poſſeſſed more than catiſh prudence to withſtand ſuch a temptation, therefore ſhe acted conſonant to her nature; and the owner of the bird, in deſtroying her, acted according to his; more philoſophy than uſually falls to the lot of a taylor, is requiſite to prevent revenge for injuries. Hitherto then, both parties ſtood

upon equal ground; he, therefore, who *firſt* brought his action, muſt have been the aggreſſor.

As there is but little difference in the numbers of a Jury, there ought to be none in their deciſions. The buſineſs of Juries of every denomination, is to decide equitably, in caſes of wrong; of which one number is nearly as able to judge as another. One rule ſhould guide them all, that of *Right*. But all Courts (Chancery excepted) and all Juries, decide *right* with rigour, except the Court of Requeſts, and *that* can ſoften the rough ingredient, by infuſing clemency. Law exerciſes no power but that of puniſhment; but the deſign of a Court of Equity, as obſerved before, "is not ſo much "to puniſh for an evil, as to give the offender "a chance to repair it." Hence, law puniſhes for

for *paſt* offences, equity holds up the rod againſt future.

As the County and Hundred Courts, with the Juries which ſupport them, are what the learned Judge had much at heart, we will examine both.

It may be aſked, What *was* and what *is* a Jury? It *was* inſtituted by Alfred, one of the beſt of kings, who appointed, that a number of people ſhould be ſummoned, all men of property, equal at leaſt, in that day, to two or three thouſand pounds in this; and as knowledge is often attendant upon property, they were juſtly ſuppoſed to be tolerable judges, who, by deciding the intereſt of others decided their own. Twelve of theſe were fairly choſen by ballot, to determine differences between man and man, to aſcertain how far a culprit fell

under puniſhment for breaking the laws of his country, and to act as a counter-balance to the powers of the Crown, then enormous. It was the office of the Bench to repeat their deciſion,

This *was* a Jury.

But time, that great corrupter of things, which is every moment working changes, has wrought a thorough alteration in that palladium of Britiſh liberty, *the Jury*. The foundation of this grand building is yet perfectly ſound, but the ſuperſtructure is rotten, and when the fabric totters, it calls loudly for repairs. The better informed and more opulent perſons, to whom this duty of attendance belongs, eſcape through private avenues, ſuch as pride, buſineſs, intereſt, pretended ſickneſs, ſecret fees, &c. The weight, therefore, of this important concern falls upon the lower claſs, who are utterly unable

to

to ſuſtain it. The bailiff finds it difficult to procure the number wanted, even without the requiſite qualifications, and may at laſt be ſaid to have muſtered twelve bodies without a head! This officer has been ſo diſtreſſed for a Jury, that I have ſeen him pick up idle people in rags, while loitering in the open Hall, at Warwick,

This *is* a Jury.

And now we find the caſe reverſed, for theſe *guardians of liberty* can give no judgment of their own, becauſe they have none, but reverberate that of the Bench; inſtead, therefore, of a Jury of *twelve*, it is in reality the voice of *one*. A baſtard Jury like this, exactly ſuits the temper of a Court, for as every man is fond of power, it throws the *whole* into his hands who preſides over it, whether he be Judge, Juſtice, or only an Attorney, who governs an obſolete

Hundred Court. What can be expected from men who move in a circumſcribed latitude, and were never taught to think beyond it! While they remain in their proper vortex, they may ſhine with a ſmall luſtre, ſuitable to their ſtation, but urge them into other purſuits, and they inſtantly loſe their uſe, become grovelling and dangerous lights, which lead the unwary to deſtruction. A profeſſion diſgraced by mean characters becomes too contemptible for thoſe to accept, who are better qualified; what phyſician will preſcribe with a quack? To create ſuch people guardians of liberty, is like employing a weaver to make hats, or, to negociate treaties with foreign princes; he *will blunder* in a profeſſion of which he is wholly ignorant.—Michael Alcock having borrowed four hundred pounds upon bond, of a gentleman near Sutton, became a bankrupt. The creditor exhibited the bond to prove the debt,

debt, but the commiſſioners refuſed to admit the claim until the hand-writing was identified, which produced a trial at Warwick. What reaſon they had to doubt, what every one elſe believed, is uncertain. The validity of the bond was readily proved to the ſatisfaction of the Court, and the Jury were directed to give their verdict. They conſulted together till the Court was tired, and the Judge expreſſed his ſurpriſe, that ſo plain a caſe ſhould be attended with difficulty. "My lord," ſays the foreman, *George Baylis*, with a look of anxiety, "we are "a little *bobbled*, ſome of us know Mr. Plaintiff, "and others know Mr. Defendant, but we "cannot tell who Mr. Verdict is." The whole audience burſt into a roar, and the *protectors of Britiſh liberty*, looked, "they could not tell "how." I have repeatedly ſtood at the head of a Jury, and have been ſorry that I could not find one ſentiment among them all. I have

endeavoured to induce them to find a judgment of their own, and think for themſelves; but although their talents were not defective, yet the mind uncultivated, like the dull oyſter in the expanded ocean, though perfectly ſafe while confined to his little habitation, yet if he once quits the narrow circle he is loſt.

If we ſurvey even a *grand Jury* we ſhall find them extremely defective, becauſe they are able to perform but half their work; they can examine only one ſide of a caſe; the law allows no more. I am perſuaded many a bill would be thrown out, could the merits of both ſides be examined. I have aſſiſted in finding bills which I was aſhamed to hear tried; they tended only to diſgrace a bench, and fee an hungry attorney.—In the ſummer of one thouſand ſeven hundred and eighty-eight, two young men were indicted for breaking open a houſe, and attempting

ing to rob it. Six witneſſes, at leaſt, ſwore to the fact, and were uniform in their depoſitions, though ſeparately examined. I inſtantly took the pen to write the fatal words, *A true bill*, when the bailiff, who guarded the Jury-room, modeſtly obſerved, "he believed the proſecution "was invidious, and that a gentleman without "could explain the matter." I obſerved to my brethren, that we had gone through all the evidences mentioned in the indictment; that their teſtimony had been taken upon *oath*, that we were not authorized to call in ſtrangers, nor allow their evidence, becauſe we had no power to adminiſter one; but if it met their approbation, I wiſhed all the parties might be admitted, and confront each other; that an oath did not prove a fact, and no evil could enſue from inquiring after truth.—Immediately entered a whole cloud of witneſſes, when it appeared, that a peaceable hen-peckt father,

a looſe

a looſe mother, and a blooming daughter of twenty-four, much inclined to grant favours, occupied a cottage near Nuneaton; that the two young men were joiners, of fair character, employed in erecting a gentleman's houſe in the neighbourhood; that in daily paſſing by the cottage, which lay between their lodging and their labour, they had often eyed the daughter, and exchanged a jocoſe expreſſion with the mother, while ſpinning at the door. She told them, "they were novices, and did not know "a —— from a cart wheel." That returning late in the evening (Saturday) after becoming mellow with their reckoning-pot, they brought a cart wheel from a brick-yard, and reared it againſt the door, which, being weakly barricaded within, was burſt open by the weight of the wheel; perhaps the powers of youth, aided by thoſe of ale, might cauſe them not to handle the wheel very gently; that a ſcuffle enſued,

enſued, but without much injury; that the young men were ſuppoſed to have ſaved money, which induced an hedge lawyer, and the mother, to fabricate an indictment, to ſqueeze them. I need not ſay, the Jury, without heſitation, threw out the bill, but it was with difficulty they reſtrained themſelves from ordering the lawyer into the room, and treating him in the manner he deſerved. Thus the Jury quitted the path preſcribed by law, to prevent deſtruction; or, which is an Iriſhiſm, they did wrong, to do right. Could it have been ſaid againſt the young men, "they had been indicted for houſe-breaking," they might have become abandoned characters, and been loſt to ſociety; could the lawyer and procureſs, have ſucceeded in their firſt attempt, they might have tried a ſecond; the errors of the grand Jury prevented both.

The

The moſt uſeful, ſafe, and intelligent Jury, is the ſpecial; and, the moſt expenſive.

The HUNDRED COURT

comes next under inſpection. I ſhall deſcribe that of Hemlingford, in the county of Warwick. In exhibiting one, we ſee all.

Much praiſe is due to the makers of the Engliſh laws, but not quite ſo much to their managers, or how could two litigious perſons ſpend eleven pounds, when the object in conteſt was only ſix-pence? Or, how could two others, whom I could name, ſacrifice one year's contentment, and two hundred pounds, to a paltry half-guinea? Or, how could an eſtate ſlumber in Chancery fifteen years, and the attorney, when he ſaw his client was wearied in ſpirit, and exhauſted

exhauſted in pocket, purchaſe his right for a trifle, and procure a decree the enſuing term in his own favour? Thus the law betrayed away that property it ought to have protected; and now, a corrupt eſtate in the attorney's hands, like the corrupt blood in his veins, runs through *him and his heirs for ever.*

One of the moſt celebrated authors that ever wrote, juſtly remarks, *the law is our ſchool-maſter.* There is a ſtriking reſemblance between the law and the ſchool-maſter; in *both* ſchools we expect to find inſtruction and protection, but inſtead of theſe, we find the rod. *Both* were deſigned for common benefit; they begin with mildneſs, then become burdenſome, and at laſt, end in tyranny. Their inſtitution was excellent, their reform is neceſſary.

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The Hundred Court comes under this deſcription. Its original was laudable, but it has degenerated into abuſe. The beginning of a ſuit is revenge, the end, repentance. Here the leſſons of humility are taught in ſtronger characters than in the pulpit. The looſer and the winner complain. Whether two tempers, or two houſes are in a flame, it is equally imprudent to fan that flame in either. The Hundred Court increaſes the fire and the expence, the Court of Requeſts damps both in a moment.

This Court claims the antiquity of near a thouſand years. That of Hemlingford originated from the Saxon kings. They granted it to the Earls of Mercia, who held it by their Shire-reeves. The Sheriff yet holds it by deputation once in three weeks as formerly, at Birmingham and

and Coleſhill alternately. It takes cognizance of matters of debt, trover, and diſpute, under forty ſhilſings, which are determined by a Jury.

Though the nominal ſum of forty ſhillings, was the ſame in the eighth, as in the eighteenth century, yet there is an amazing difference in the real. The intereſt of that ſum would almoſt have maintained a frugal perſon; but now, even one of our journeymen would conſume both principle and intereſt in a month. While money was extremely valuable, this Court determined matters of conſequence, but now, trifles. At its inſtitution, money was perhaps twenty times its preſent value, therefore the Court could determine a cauſe equal to the preſent ſum of forty pounds, then, a fortune, and only poſſeſſed by a few, in compariſon to the preſent number. As by the reduction of money, the intention of the Court is defeated; why then ſhould the

Court itſelf remain. However, if the ſum contended for, be a trifle, the expence is not; *this* money, perhaps, increaſed in quantity, what it loſt in value. A cauſe often coſts five or ten pounds, and a much larger ſum has been expended in recovering a few ſhillings.

Some have declared, "they would ſooner "pay an unjuſt demand, than try their fortune "in this Court," adhering to the words of Chriſt, If any man will ſue thee for thy coat, let him have thy cloak alſo.

A girl recently ſued her maſter, Thomas Wakefield, in the Court of Requeſts for a ſuppoſed debt of ten ſhillings. The Commiſſioners, judging the demand unreaſonable, diſmiſſed the cauſe, at the expence of ſix-pence. Revenge then ſent her to the Hundred Court. The maſter loſt it; which, with ſome dependant cauſes,

cauſes, coſt him forty guineas. The attorney, who conducted the ſuit for the girl, told the maſter, "if he would bring it into the Court of King's-Bench, he would win." This proves two points, that the King's-Bench is leſs degenerate than the Hundred Court, and, that the attorney wanted a job. The maſter declined it, being already ruined.

Let any lawyer, whether he patroles the circuit, or breathes the ſtagnate air of Cherry-ſtreet*, ſolve this queſtion, Which is the beſt of two Courts, that which commits errors, or that which amends them?—While an attorney, frequently concerned in the Hundred Court, ſat ſmoaking his pipe in a public houſe, he obſerved to the landlord, "if he had any "money owing him, he could eaſily recover

* Where the Hundred Court is held.

" it without trouble or expence." I have none, replied the landlord, to this ſilver bait, but what I expect in due courſe; yes, anſwered the wife, with a ſmile, John M—— owes for two mugs of ale. With this ſlender authority the attorney proceeded againſt him in the Hundred Court for four-pence. The expence ſoon amounted to more than two pounds, at which price his effects, perhaps, had been rated, and poor John's bed was taken from under him, with his other trifling chattels, and he, with his family, deſpoiled of houſe-keeping. The bailiff of the Court, who took the diſtreſs, and ſold the property, forgot to render an account, or return the overplus, for which John was directed to ſue him in the Court of Requeſts. The landlord appeared, and declared he neither gave, nor intended to give, an order to purſue him in any Court, believing he would pay him without, and that his wife meant no more than a jeſt.

a jeſt. Upon inquiry there appeared four ſhillings due to John, which the Court awarded againſt the bailiff, who, being a ſtranger to tender ſenſations, and, habituated to acts of violence, was no way abaſhed; but of all the perſons in the Court, ſeemed the only one who felt no pity for this hard caſe; a caſe wherein the little delinquent was ſurprized into ruin, and where the crime and the puniſhment bore no proportion.—Thus the Court of Requeſts recovers that property which was loſt, but the Hundred Court takes that which remains.

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In March, one thouſand ſeven hundred and eighty-two, Aſton ſued Aſhford in the Hundred Court for one pound ſixteen ſhillings and ſixpence; Aſhford upon this applied to Aſton, gave him two guineas, with a promiſe to pay whatever the expence ſhould amount to. Aſton, in conſequence of this agreement, wrote to the

conductors of the Court, informing them, that he had ſettled the matter with Aſhford, and ordered them to deſiſt. Aſton died. The Court ſtill proceeded in the name of the defunct. Aſhford then applied to an attorney, in his own vindication; the attorney undertook his defence, yet execution iſſued in the dead man's name againſt his goods, for ſix pounds, which brought him to diſtreſs. His property being wholly gone he was unable to juſtify his injured cauſe; but although hunted down by ſavages, his afflictions were not yet to end. The attorney he had employed, purſued him in another Court for a guinea, as his fee, which he being unable to pay, was dragged into priſon.—Theſe are the dreadful effects of the Hundred Court. A Court of Conſcience, compoſed of the moſt abandoned villains, could not make ſuch horrid work, their proceſs would not allow it. In theſe caſes, the ſuitors would not glory in the freedom of

Engliſhmen,

Engliſhmen, nor praiſe the Jury. Can that proceſs be juſtified, or the laws that made it, which is ſometimes attended with ruin, even to the winner?

The authority of this partial Court extends ſolely to houſe-keepers. It is difficult to aſſign a reaſon why our ſhort-ſighted anceſtors ſhould exempt others from paying their juſt debts, who, being diſencumbered with a family, are the beſt able to pay them. Neither does it extend to perſonal confinement, but only to the ſeizure of property; which is another error in the inſtitution. Their dreadful artillery is chiefly levelled at the inferior houſe-keeper, who, being ignorant, is often taken by ſurpriſe and blown to pieces, to the deſtruction of the family, the detriment of trade, and the increaſe of the poor's rates. Beſides, if a ſuitor wiſhes to recover a ſmall ſum, he is uſually induced to

employ an attorney, which cannot be effected without a conſiderable expence, for he attends the Court at Birmingham, and Coleſhill, during the proceſs.

No power can be founded in rectitude which countenances fraud. If a defendant, though caſt, chuſes to attend every Court day, by himſelf, or agent, he may ward off the blow for ever. His appearance, which would be dangerous in other Courts, is his greateſt ſecurity in this; nay, he even ſtands a chance to ruin the plaintiff, by entailing upon him a continual expence. What ſhall we think of that power which preſſes a man to deſtruction for ſeeking his right! Again, if a defendant, againſt whom nothing lies but the wrath of his antagoniſt, be the leaſt off his guard, he may be trapt into execution.

We are told by Dugdale, " that Thomas de " Maidenhach, in one thouſand three hundred " and forty, claimed various privileges by pre- " ſcription, as Lord of the Manor of Aſton; " among others, an exemption for himſelf, and " his tenants, from ſuits in the Hundred Court." —This indicates, that the world, even in that remote day, muſt have entertained unfavourable ideas of a Court, which they ſtrove to avoid as a peſtilence. This laſting ſtigma, marks it for a nuiſance. Perhaps the inhabitants of Aſton are the only favoured people in the whole Hundred; they alone can boaſt the freedom of Engliſhmen. We learn from this quotation, the oppreſſive conduct of the Court is of great antiquity. It muſt long have been irkſome, before any lord would ſolicit an exemption, perhaps, we may venture to pronounce, two hundred years. As Maidenhach claimed by preſcriptive right, we may reaſonably ſuppoſe

two

two hundred more had elapſed, from the firſt exemption till he renewed his claim; and from thence to the preſent year, one thouſand ſeven hundred and eighty-nine, is four hundred and forty-nine more, conſequently this Court has been a ſcourge to the neighbourhood eight or nine hundred years! Like a cruel ſchool-maſter, it ſeized the rod in early exiſtence, and has ſeverely flogged the inhabitants of Hemlingford, for thirty generations.

If curioſity ſhould lead the ſtranger to this Court, perhaps he may find the directors ſleek and plump, the ſuitors lean; this will naturally bring to his idea, a hive of bees, which draw ſweetneſs to themſelves, but ſting where they touch. He will be ready to fear that a ſuit in this Court would reduce his own to rags. While he breathes this polluted air, he will doubt whether he breathes in a land of freedom. If

he

he happens to be an antiquary, he will find this the only ſpecies of antiquity in the neighbourhood, that diſguſts him; if a divine, he will have occaſion to warn his hearers to avoid *two* places; if a lawyer, he will wiſh himſelf *in* one; if he be no houſe-keeper, he will congratulate himſelf that he is out of its reach; and, if it was poſſible he could, in any place, rejoice becauſe he poſſeſſed no property, it muſt be in this. He will obſerve, they are ſeldom troubled with penetrating to the root of a queſtion, but content themſelves with the *fruit*. He will alſo perceive the Jury are compoſed of the loweſt claſs, collected from the ſhop, the ſtreet, and the alehouſe, who, having no character to keep, have none to loſe; equally narrow in underſtanding, and in fortune; humbly ſubmitting to direction, and, by echoing back the words of the Judge, become the magpies of the Court. A degenerate Court can only be ſerved by a

degenerate

degenerate Jury; in *both* the obſerver will diſcover a family likeneſs; they exactly tally, but with this difference, while one carries off the golden fleece, the others look wiſtfully on.

This is the Court, and the Jury, with which the venerable Judge was pleaſed in idea, and which he honoured with the appellation of, *that valuable prerogative of Engliſhmen.* A ſhadow, without a ſubſtance. A Court, chiefly applied to by the ignorant, and thoſe who delight in the ſweet, but poiſonous feaſt of *revenge.* A Court, which multiplies the evils it was meant to redreſs; directed by craving leeches, who ſuck the deepeſt, where there is no blood to ſpare; bungling artiſts, who, in reducing the wart, deſtroy the limb; cauſing long, and painful ſenſations, which, upon application, are inſtantly cured by a Court of Requeſts.

Is it a wonder the people of England eſtrange their minds from a troubleſome and dangerous inſtitution, and invite a better? they never yet threw away the apple to chew the paring. The Judge allows, the County and Hundred Courts are depraved, and attended with procraſtination, trouble, and expence, what reaſon then can there be to revive them? He alſo *fears* the practice of the Courts of Requeſt, may in time become inconvenient; which ſhews *that* evil is not yet arrived. What reaſon is there to aboliſh a good thing, unleſs it becomes bad? A Court of Conſcience, by the arrangement of its powers, may do much good, but by the circumſcribed ſtate of thoſe powers it cannot do much miſchief. The prolixity of the County and Hundred Courts will not admit of that reform earneſtly wiſhed for by the worthy Judge, he therefore falls by his own argument, for how can an infinite number of cauſes be preſented to a Jury,

who,

who, like other heavy bodies, are ſlow of movement? If the freeholders are burdened with their preſent attendance, would not that burden increaſe, were the cauſes multiplied? The ſuitors alſo would ſuffer by delay, their diſputes be neglected, and their quarrels continued. It has been ſaid, "if the Courts were not eaſy of "acceſs, many ſuits would be prevented." But this would deſtroy one evil, and ſubſtitute a greater. The privilege of going to law is one of the chief branches of Engliſh freedom, but to ſubmit every trial to a Jury would inevitably deſtroy that freedom. Deprive a man of the power of vindicating his wrongs, and we *really* deprive him of the valuable prerogative of an Engliſhman. Two perſons can eaſily begin a conteſt, which they cannot end, it therefore becomes neceſſary for a third power to interfere, which, by a judicious application, cures the defect. As differences perpetually ariſe, a ſpeedy

remedy ſhould always be near. Quarrels cannot be prevented, but their continuance may. In all diſputes, both parties think they are right; but a faithful deciſion ſhews who is wrong, which is the ſureſt method of making peace. Many are fond of getting into law, but more, of getting out; the conciſe proceſs of a Court of Conſcience accommodates both, but the verboſe proceedings of a Jury, ſuits neither.

Notwithſtanding the Judge's dreadful prophecy againſt Courts of Conſcience, yet in another place he ſpeaks boldly in their favour. How his following ſentiments coincide with thoſe before recited, I leave to the reader. "Equity "is the ſpirit of all laws. The anxious deſire "to obtain acts of Parliament to erect Courts "of Requeſts, clearly proves that the nation "is truly ſenſible of the great inconvenience "ariſing from the diſuſe of County and Hundred "Courts.

" Courts. The time and expence of obtaining " a ſummary redreſs are very inconſiderable, " which makes it a great benefit to trade."— This is ſaying as much *for* Courts of Conſcience, as the moſt ſtrenuous advocate *need* ſay.

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The ſuppoſed arbitrary power of a Court of Conſcience, has been compared to that of an arbitrary king. Perhaps the little pride of a Commiſſioner may be gratified by ſo exalted a compariſon, till we examine its merits, and then, the compariſon, and the pride, fall together. It has been obſerved in a celebrated publication, " that an arbitrary monarchy " has many advantages over a limited one, could " we be aſſured of being always governed by " wiſe and good kings. In like manner, we " ſhould feel leſs repugnance to the arbitrary " reſolutions

" reſolutions of a Court of Requeſts, could we " be certain that the Commiſſioners poſſeſſed " the ſame qualities; but having ſeen frequent " inſtances of ignorance, folly, and partiality, " in thoſe who preſide in ſome of theſe Courts, " we do not look on ſome of theſe juriſdictions " with the utmoſt complacency."

The *names* of a King and a Commiſſioner, may eaſily be drawn together, but it is not ſo eaſy to draw a likeneſs of their powers; they differ in theſe, as widely as in their circumſtances.

The Stuarts, the Tudors, and ſome ſovereigns prior to either, thought laws were made for ſubjects, not for kings; a thought which never yet ſtruck a Commiſſioner.

A King is above the laws; but the Commiſſioner is obliged to be guided by them. The laws will not puniſh one, for their breach; but, to them, the other is amenable.

The King acquires power by acting againſt law, but the Commiſſioner loſes his. His power encreaſes exactly in proportion to his juſtice.

The King has no peer, and gives orders in private, conſequently, acts without controul; but the Commiſſioner conſtantly determines in the face of an audience who perfectly know him. They reciprocally conſider each other as equals; they would not ſuffer that ill-treatment from him, which they would from a ſuperior; he is, therefore, ſo far from acting wrong with *deſign*, that even his errors of judgment

judgment are called in queſtion; to act wantonly could anſwer no end, but to draw on abuſe.

The King is a gainer by an increaſe of power, but the Commiſſioner gains nothing; if he uſes his power well, he may eſtabliſh his credit, if ill, he loſes his character; he may meet the hiſſes of his equals, but the other is above them.

A King conſiders his ſubjects as made for his ſervice, but the power of the Commiſſioner is created by the laws, under which he is bound to act for the ſervice of others; the firſt claims their property for himſelf; the ſecond, only divides property between man and man, by which he acquires nothing.

A King is ſaid to do no wrong; but the Commiſſioner is ſeldom allowed by the loſer, to do right; this, by the way, is the greateſt excitement to be upon his guard, that he may avoid complaints.

Thank Heaven, I have drawn an arbitrary King, an animal unknown in this part of the globe.

" The frequent inſtances of ignorance, folly, " and partiality," complained of, appear in every Court, they ariſe from frailty, and are inſeparable from the human mind. Put ſuch people into commiſſion who are fit for Jury-men, and they will generally act with propriety. Errors of judgment ought to be excuſed. No Commiſſioner will act wrong, for the ſake of doing wrong. It has long been remarked, " there

" is

" is no perfect ſyſtem upon earth, the weakneſs " of our nature will not allow it;" why then is it expected from a Court of Requeſts? If a Court is to be rejected becauſe it has errors, we muſt reject all. We are not to examine whether a Court be perfect, but, what Court comes the neareſt to perfection? Of the various ſchemes which offer, *that* ought to be choſen which is the leaſt erroneous. Can a government be juſtified for uſing a *bad* in preference to a *good?* As every thing tends to degenerate, the firſt thought that ſhould ſtrike the obſerver is, which of two ſyſtems can be made the worſt? The next conſideration is, which can the eaſieſt be mended? Let the foregoing pages anſwer theſe queſtions.

There is an amazing difference between a Court of Law and one of Conſcience. The

firſt lingers in *deciſion*, the laſt, in puniſhment. A cauſe, in a Court of Equity, only need be known, to be decided; but in a Juridical Court, it muſt ſlowly paſs through every ſtage of dull prolixity, where the true picture is liable to be hid in the multitude of ſhades thrown over it. A Court of Conſcience does not puniſh for paſt enormities, but ſtipulates terms of reparation, and obliges the offender to a better behaviour; this is done by placing him in the hands of the plaintiff, whoſe power is alſo ſhackled to prevent miſchief; but in a Court of Juſtice, the offender is inſtantly put into the power of the laws, where no *future* conduct can atone for the paſt. The expence, in a Court of Requeſts, hurts neither plaintiff or defendant, but in the other, it is apt to ruin both. As the conductors of a Juridical Court, acquire emoluments from practice, it is their intereſt to *protract*; but as thoſe in a Court

of

of Conſcience, have no ſuch bewitching proſpects, it is theirs to diſpatch. The anxiety of mind ariſing from a cauſe floating through the Courts of Law for months, nay, ſometimes for years, is intolerable; while, in a Court of Equity, it cannot laſt for many days: the Commiſſioners never allow a wanton continuance.

The following concluſions naturally ariſe from the remarks in the courſe of this little appendix,

That the Jury was an excellent inſtitution; but we may exclaim with Milton, Alas how fallen! If we conſider the preſent ſtate of Juries, they are, in many inſtances, as unfit to conduct the buſineſs put into their hands, as the bear to conduct the boat *.

* Gay's Fables.

That

That whether we conſider them in their preſent, or priſtine ſtate, many cauſes are as improper for their eye, as algebra for that of a tinker. The tool and the work ſhould always correſpond; a ſledge hammer is never uſed to drive a ſprig. Their cumbrous proceedings are no way calculated for the majority of cauſes that are brought before them; what *judicious* farmer would raiſe his cow to the roof of his barn to eat a blade of wild oats, which he might eaſily bring down?

That Court, the errors of which nobody will own, is the leaſt likely to guard againſt them, and, the moſt apt to commit them; ſuch a one comes the neareſt to an arbitrary Court.

That the worthy Judge Blackſtone might be miſtaken, through that bias from which no man

is

is exempt, or, he might not beſtow, upon this part of his ſubject, that depth of thought which it required.

That a number of men united to try right, are a proper Jury, be that number what it may. A few may ſee with as much perſpicuity as many; nor is their number of conſequence, except when too large; then, it approaches the mob, and becomes detrimental to buſineſs.

That the Lords, the arbitration agreement, and the Court of Requeſts, are as much a Jury as that of twelve.

That the Hundred Court, like the ragged garments which often appear before it, is not worth repairing.

That

That as nature has furniſhed us with the talents for quarrelling, we ought to furniſh ourſelves with the ſpeedieſt antidote againſt it.

That the conciſe, equitable, and cheap proceedings in a Court of Requeſts, are the moſt ſalubrious remedies yet diſcovered; the frequent ſolicitations they excite to government for the eſtabliſhment of ſuch Courts, is a poſitive proof of their utility; the people of England, after mature deliberation, ſeldom think wrong.

That a Court of Conſcience is, perhaps, of all others, the moſt diſtant from arbitrary proceedings.

That the Commiſſioner has not one inducement to act wrong, but many to act right.—And,

That perfection is not to be found in any Court, but of all the Courts we know, perhaps a Court of Requeſts comes the neareſt.

FINIS.